

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE POLLUTION CONTROL AGENCY

In the Matter of the Administrative
Penalty Order Issued to Matt
Crowder, d/b/a Crowder's Station

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge Steve M. Mihalchick on September 2, 2004, at the Baxter Office of the Minnesota Pollution Control Agency, 7678 South College Road, Suite 105, Baxter, MN. The hearing record closed at the conclusion of the hearing on September 2, 2004.

Beverly M. Conerton, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Minnesota Pollution Control Agency (MPCA). Matt Crowder, 17203 Grouse Road, Little Falls, MN 56345, appeared on his own behalf and on behalf of Crowder's Station. Paul Crowder, Matt Crowder's father, was also present and testified.

NOTICE

This report is a recommendation, **not** a final decision. The Commissioner of the Pollution Control Agency will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the report to file exceptions and present argument to the Commissioner. Parties should contact Commissioner Sheryl Corrigan, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, MN 55155-4194 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

Whether Matt Crowder violated Minn. Stat. §§ 116.48 and 116.481, and Minn. R. parts 7151.6300-.6700, .7200, .7400, and .9100 governing aboveground storage tanks, and whether the Administrative Order issued to Matt Crowder, totaling \$8,940.00, was reasonable.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Matt Crowder operates Crowder's Station, a small service station located on a seven-acre site at 1000 Lindbergh Drive NW in Little Falls, Minnesota. He took over the business from his father Paul Crowder in about 1998. Paul Crowder still owns the business, as he has since 1935, and still lives next door to the station. Until fairly recently the mailing address for the station was Rt. 1, Little Falls. It is physically located at 1000 Lindbergh Dr. NW, which was previously 1000 2nd St. NW. At the rear of the property is a railroad track, then a county road, and beyond that, the Mississippi River.

2. Matt Crowder has now corrected all the violations discussed below. The findings below describe conditions that existed before the corrections were made during the summer of 2004.

3. Crowder's Station has five steel aboveground storage tanks (ASTs) located behind its small station building.^[1] ASTs were installed because the water table was too high to allow underground tanks to be installed. The tanks are arranged in a line from north to south, a few feet from each other. The first tank was installed in about 1935. It is a 12,000-gallon horizontal tank sitting on pads that raise it a few inches off the ground. It was registered with the MPCA in 1990 as Tank No. 1002. The second tank was installed in about 1949 and is identical to the first. It was registered in 1990 as Tank No. 1003. Both tanks held gasoline, apparently different grades. The two tanks were next to each other, apparently with Tank No. 1003 to the north, but that is not entirely clear in the record.^[2]

4. The third tank was installed in about 1953 and has been used ever since to store diesel fuel. It is a 4,000-gallon horizontal tank registered in 1990 as Tank No. 1004. It is also on pads and a few inches off the ground. It is on the north end of the row of tanks.^[3]

5. The fourth tank was installed in about 1974 to store unleaded gasoline. It is a 4,000-gallon vertical tank that sits on its end on the ground at the south end of the row of tanks, to the back. It was registered in 1990 as Tank No. 1001.^[4]

6. The fifth tank is a 500-gallon horizontal tank sitting a few feet off the ground on what appear to be concrete supports. It is also on the south end, in front of the vertical tank. It was used by the Crowders to store fuel oil that fed a heater in the station building. The building was converted to natural gas heat somewhere around

1990 and the 500-gallon tank has been empty ever since. It has never been registered, but some agency documents refer to the 500-gallon tank as No. 1005. It has never been sealed or otherwise removed from possible use. When it was in use, Paul Crowder filled the tank himself by running a long hose from the diesel fuel pump to the tank. (Number 1 diesel is the same as fuel oil.)^[5]

7. The four larger tanks are filled through three steel pipes that run from a substance transfer area located about 12 feet north of the tanks.^[6] From there, the pipes run under the ground to the tanks, although one of them is so shallow that its top is visible at ground level. One pipe, painted green, runs to the nearest tank, the diesel tank, where it comes out of the ground and connects to the diesel tank. The very shallow pipe, painted red at the ends and red and white where visible along the ground, goes to the next tank, one of the 12,000-gallon tanks, where it comes out of the ground and to that tank. The third pipe, painted white, comes out of the ground at the diesel tank, then runs a few inches off the ground along the ends of both 12,000-gallon tanks and to the 4,000-gallon vertical tank. It is currently connected to the last two gasoline tanks, but may have been connected to the other gasoline tank in the past. Directing gasoline to the proper tank is done by valves where the line connects to each tank.

8. The four larger tanks are connected to retail dispensers at the front and side of the station building by underground two inch galvanized pipe.^[7]

9. Paul Crowder obtained a Spill Prevention Control and Counter Measure Plan Engineering Report dated December 7, 1974, from a Registered Professional Engineer.^[8] Such plans were required by EPA regulations for facilities that could reasonably be expected to discharge oil into navigable waters. The Engineering Report reported the Mississippi to be 2,600 feet from the facility.

10. The Engineering Report listed the two 12,000-gallon and two 4,000-gallon tanks and stated that there was a potential for a spill from a rupture of a tank and that the railroad tracks provided secondary containment. It stated:

There has (sic) been no reportable oil spills from this facility in the last 40 years of operation. The Mississippi River is approximately 2600 feet East of this facility and is separated by railroad tracks and County Road No. 213. In the event of accidental spillage from one of the individual storage tanks the gasoline would pond in a low area on the proterty (sic) and very likely soak into the sandy soil without leaving the owners (sic) property.^[9]

11. On June 20, 1990, the four largest tanks were registered with the MPCA, apparently by Paul Crowder. Tank No. 1001 was reported to have been installed in 1975, but must have been installed somewhat earlier because it appeared on the December 7, 1974, Engineering Report.

12. The Crowders have always maintained the station, and the tanks and lines in particular, in good order. They have never had a spill while filling the tanks or a leak from the tanks.

13. Stan Kalinoski was the MPCA tank inspector in the Brainerd area.^[10] On January 22, 1998, Kalinoski inspected the station and met with Paul Crowder. Paul Crowder informed Kalinoski that he had retired and that Matt Crowder had taken over. Kalinoski noted that it was a very clean and well run site. They discussed AST rules that the MPCA had been working on for years with various interest groups and that were nearing completion. They discussed at least the lack of any diking, probably because diking was going to be required immediately by the new rules. Paul Crowder told Kalinoski that they would deal with the diking after the new rules were finalized.^[11] Paul Crowder recalls that Kalinoski told him not to do anything until heard from the MPCA.^[12] Kalinoski would not have used those words, but may well have told Crowder that he didn't have to do anything until the rules were finalized and that the MPCA would send out information when they were.

14. On April 13, 1998, the MPCA published notice of its proposed rules.^[13] On October 26, 1998, the MPCA published notice that the proposed rules, with a few modifications, were adopted.^[14] Under Minn. Stat. § 14.18, the rules became effective five working days later, Monday, November 2, 1998.

15. The MPCA sends its quarterly newsletter, the Tank Monitor, to registered tank owners in the state, including Crowder's Station.^[15] In the Fall 1998, Vol. 9, No. 2, edition of the Tank Monitor, the page one headline read, "New aboveground storage tank rules gain approval." Above that was a banner reading, "Continuous dikes must surround AST's by Nov. 1." The two-page article described the history of the rules, highlighted the rules for facilities storing more than a million gallons of liquid substances and the rules for facilities storing less than a million gallons, and listed the types of ASTs that were exempt from the rules. The rules listed for the facilities storing less than a million gallons included, among other items:

- a. All tanks and lines must be clearly labeled.
- b. By November 1, 1998, all existing ASTs must be surrounded by a secondary containment area meeting certain permeability standards. (Often done by diking.)
- c. By November 1, 1999, all existing substance transfer areas must be equipped with spill containment.
- d. By November 1, 2003, all existing tanks must have overfill protection and corrosion protection, and all underground lines to the tanks must be cathodically protected.

One of the exemptions listed excluded ASTs holding 1,100 gallons or less used to store heating oil for on-site consumption from the requirements of the rules.^[16]

16. On September 9, 2002, the MPCA sent a letter directly to every registered tank owner that reminded them that the deadline for the November 1, 2003, upgrades was approaching. It also listed the requirements that had become effective in 1998 and 1999, and provided information on resources available for financial assistance.^[17]

17. Matt Crowder did not read or ignored the materials he received from the MPCA. He continued to operate the station well and without any spills or leaks, but he made none of the upgrades required by the rules adopted in 1998.

18. Jason Lindquist is now the tank inspector in the Brainerd area. On February 25, 2004, he conducted a routine compliance inspection of Crowder's Station. He noted that one of the five tanks was not registered; he considered the tank to be "active" and not "out-of-service." He noted that the vertical tank did not have the corrosion protection required for non-elevated tanks. He also noted that there was no containment dike or transfer area spill protection, none of the tanks had sight gauges or overfill protection devices, none of the tanks were labeled, and other apparent violations. Matt Crowder, whom Lindquist believed to be both the owner and operator, was not present at the station at the time of inspection. Lindquist spoke with Paul Crowder at the time.^[18]

19. On March 1, 2004, Lindquist returned to Crowder's Station for a follow-up inspection, at which time he explained the deficiencies and discussed with Matt Crowder the necessary upgrade requirements to bring the site into compliance. Lindquist informed Matt Crowder that because of the number of violations, he could be fined or required to close down his tanks. Matt Crowder told Lindquist that he could not afford the upgrades or the fines. Lindquist suggested that Matt Crowder contact a tank contractor to inquire about upgrades.^[19]

20. Two days later Matt Crowder and Lindquist spoke by phone regarding Matt Crowder's leak detection records. Matt Crowder described how he reconciled each of the tanks monthly by determining how much product was in the tank with sales and deliveries. Mr. Lindquist informed Matt Crowder that the tanks at the site needed enhanced monitoring for leaks and leak detection.^[20]

21. On March 16, 2004, Lindquist visited the site again to verify his observations. Matt Crowder suggested that Mr. Lindquist was being unfair in his inspection and refused to provide any further information until the MPCA put in writing what had to be done at the site.^[21]

22. On March 17, 2004, Lindquist, other MPCA personnel from around the state, and counsel met (apparently by telephone) in a "forum" to discuss the violations Lindquist had found at the Crowder's Station. They decided that Lindquist should issue a 10-day letter to Matt Crowder.^[22]

23. Lindquist sent Matt Crowder a 10-day letter on April 2, 2004.^[23] The letter alleged the following 13 violations, some of which were multiple violations:

1. Minn. R. 7151.6300 and 7151.5300. Failure to label the five tanks with substance stored, tank capacity, and tank number; failure to label active lines; and failure to post a sign with name, address, and phone number of owner, operator, or emergency responder.
2. Minn. Stat. § 116.481, subd. 3. Failure to post a site diagram.
3. Minn. R. 7151.6400, subp. 1. B, 7151.6400, subp. 2, and 7151.5400. Failure to provide secondary containment area of adequate size.
4. Minn. R. 7151.6400, subp. 3. Failure to provide secondary containment area with materials meeting permeability requirements.
5. Minn. R. 7151.6500, subp. 1. Failure to provide adequate substance transfer safeguards.
6. Minn. R. 7151.6600, subp. 1. Failure to provide corrosion protection for Tank No. 1001, the vertical tank.
7. Minn. R. 7151.6600, subp. 3. Failure to provide corrosion protection for the underground lines from the substance transfer area to the tanks and from the tanks to the dispensers.
8. Minn. R. 7151.6700, subp. 1, and 7151.5700. Failure to provide an allowed method of overfill protection.
9. Minn. R. 7151.7200, subp. 2. Failure to conduct visual monitoring of the tank system at least every 72 hours.
10. Minn. R. 7151.7200, subp. 3. Failure to conduct monthly visual inspections.
11. Minn. R. 7151.7200, subp. 4. Failure to conduct monthly tank leak testing and annual line leak testing.
12. Minn. R. 7151.9100. Failure to empty the tanks and remove them from service because they did not meet the requirements of the rules.
13. Minn. Stat. § 116.48, subd. 2. Failure to register the small horizontal elevated tank.

The 10-day letter asked Matt Crowder to respond to the letter in writing within ten days of receipt of the letter if he disagreed with the alleged violations. The letter highlighted the importance of Matt Crowder's response, because it would be considered in determining the necessary level of enforcement action.

24. On April 6, 2004, the forum met again and decided to issue an Administrative Penalty Order (APO) to Matt Crowder.^[24] They calculated a tentative penalty following the procedures set forth in an MPCA document entitled APO Penalty Calculation Guidance^[25] and using a draft Penalty Calculation Worksheet prepared by Lindquist.

25. The APO Penalty Calculation Guidance provides guidance to MPCA staff when recommending an APO penalty to the Commissioner. It sets forth a seven-step process. Staff first determines the past and present violations (Step 1), whether the violations are "serious" (Step 2)^[26] and whether they are "repeated" (Step 3). Staff then calculates the base penalty based upon a matrix that examines the "potential for harm"^[27] against the "deviation from compliance",^[28] both labeled as major, moderate, or minor (Step 4). Increasing penalty amounts are contained in each box of a matrix.^[29] Adjustments are made depending upon the 1) willfulness of the violations; 2) the history of violations, including the similarity to previous violations, the time elapsed since the last violation, the number of previous violations, and the response to the most recent violations; 3) other factors as justice may require;^[30] and 4) economic benefit (Step 5).^[31] Staff then determines if the penalty is forgivable, i.e. neither repeated or serious, or nonforgivable (Step 6). Lastly, the penalty is reduced to the statutory maximum of \$10,000 if the calculations resulted in a higher amount (Step 7).

26. After the tentative penalty was determined, Lindquist gathered additional information. He again visited the site on April 8, 2004, to review the accuracy of the allegations with Matt Crowder. Crowder pointed out that two of his three gas lines were labeled, that he had a spill plan that stated that any spill would be contained on the property, and that the 500-gallon tank was not registered because it had not been used for at least 12 years.^[32]

27. Matt Crowder retained an attorney, who responded to the MPCA's 10-day letter by letter of April 22, 2004.^[33] The letter disagreed with some of the allegations, but said Matt Crowder would make the necessary changes as soon as possible. The letter indicated that a contractor had inspected the station a few days earlier and was preparing an estimate of the cost to bring the station into compliance.

28. From May 10 to 14, 2004, Lindquist called the forum members individually, discussed the additional information, and gathered a consensus on a revised APO and penalty calculation.^[34]

29. Based upon the information received from Matt Crowder and his attorney and from Lindquist's last site visit, the forum revised four of the originally listed violations. The labeling violation was amended to refer to four tanks instead of five and to one line instead of all three lines being unlabeled. The secondary containment area

size requirement violation was removed because the Engineering Report said a spill would be contained, but the permeability requirement violation was not changed. The two failure-to-conduct-visual-inspection violations were combined into one record-keeping violation under Minn. R. 7151.7400, subp. 4.^[35] In addition, the two corrosion-protection violations were combined into one violation. After these changes, the APO listed ten violations, one for each statute or rule violated by the conditions that existed at Crowder's Station in early 2004.^[36]

30. The forum calculated the penalty for the violations following the procedures in the APO Penalty Calculation Guidance. In Step 1, as shown on the Penalty Calculation Worksheet, they combined the violations into three groups of similar violations. Violation Group 1 consisted of labeling and notifications violations, Violation Group 2 involved equipment and safeguard violations, and Violation Group 3 was the records violation.^[37] The effect of this combining was beneficial to Matt Crowder because only one penalty was calculated for each group. Separate penalties could have been imposed for every one of the violations that occurred.

31. In Step 2, the forum determined that the violations in Violation Groups 1 and 3 were not "serious" and that the violations in Violation Group 2 were "serious." In Step 3, it determined that none of the violations in any of the groups were "repeated."^[38]

32. In determining the base penalty for Violation Group 1 under Step 4, the forum determined that the potential for harm was minor because the labeling failures, lack of site diagram, and failure to register the fuel oil tank would not directly contribute to a release. It determined that the deviation from compliance was major because most of the labeling requirements had not been met and because the one tank was not registered. Accordingly, the base penalty from the minor-major square midpoint on the matrix was \$1,250 for Violation Group 1.^[39]

33. As to Violation Group 2, the forum determined that the potential for harm was major because any of the violations could cause minor and major spills and leaks that could saturate the soil and contaminate ground water and surface waters and that might go undetected for a long period. It determined that the deviation from compliance was also major because of the number of serious violations. The midpoint of the major-major square on the matrix is \$7,500. The forum decided to reduce that to \$6,250 because the Engineering Report had been obtained and because three of the four large tanks met corrosion protection requirements.^[40]

34. Violation Group 3 was determined to have a minor potential for harm because Matt Crowder was at the site daily to detect visible releases, but a major deviation from compliance because he had not shown any documentation of doing the required monitoring. The midpoint of the minor-major square on the penalty matrix is \$1,250, but the forum reduced the penalty to the minimum value of \$500 because it was clear that Matt Crowder had actually kept up with routine maintenance at the site.^[41]

35. To the total \$8,000 of the base penalties, in Step 5 the forum added an adjustment based on five percent (\$400) for willfulness/culpability because Paul

Crowder had told Kalinoski they would upgrade when the rules were finalized. The forum also added an adjustment for economic benefit by estimating and costing the time saved by not monitoring the tanks on the required schedule (\$540). In Step 6 the forum determined the Group 1 and 3 penalties were forgivable and that the Group 2 penalty was nonforgivable, resulting in a forgivable penalty of \$1,838 and a nonforgivable penalty of \$7,102.^[42] Step 7 was not necessary because the penalty did not exceed \$10,000.

36. On June 2, 2004, the MPCA issued Matt Crowder an APO under Minn. Stat. § 116.072.^[43] The APO formally documented the violations found by Lindquist and required Matt Crowder to take specified corrective action. It ordered payment of a nonforgivable penalty of \$7,102. It also ordered payment of a forgivable penalty of \$1,838 if Matt Crowder failed to complete any of the ordered corrective action within 30 days. The APO listed the methods of obtaining review of the APO.

37. By letter of June 29, 2004, Matt Crowder made a timely request for review by an Administrative Law Judge. Matt Crowder and the MPCA agreed that the hearing need not take place within 30 days of the appeal.^[44] Accordingly, on August 10, 2004, the MPCA issued a Notice and Order for Hearing setting the matter for hearing on September 2, 2004.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Pollution Control Agency have jurisdiction over this matter under Minn. Stat. §§ 14.50 and 116.072.

2. The Pollution Control Agency gave proper and timely notice of the hearing in this matter and has complied with all substantive and procedural requirements of law and rule.

3. The MPCA is authorized to enforce state laws and regulations through the issuance of reasonable orders.^[45]

4. The MPCA bears the burden of proving by a preponderance of the evidence that its action was reasonable.^[46]

5. Minn. Stat. § 116.48 governing notification requirements, provides, in relevant part:

Subdivision 1. **Tank Status.** (b) An owner of an aboveground storage tank must notify the agency by June 1, 1990, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type,

location, uses, and contents of the tank on forms prescribed by the agency.

6. Minn. Stat. § 116.47, provides that Minn. Stat. §§ 116.48, 116.49, and 116.491 do not apply to, among other things, “tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.” This exemption has been in the statutes since before ASTs were added to Minn. Stat. § 116.48 in 1989.^[47]

7. At the hearing Matt Crowder noted that the Tank Monitor stated that tanks holding 1,100 gallons or less of heating oil for on-site consumption were exempt from the rules. Lindquist then testified that, under some statute he could not recall, such tanks were only exempt from the rules, not the notification requirements. Lindquist was only half right. Minn. Stat. § 115.03 prohibits the MPCA from adopting rules that affect such tanks. But Minn. Stat. § 116.47 exempts them from the notification requirements as well.

8. The violation for failure to register the 500-gallon tank must be deleted from the APO.

9. Matt Crowder violated Minn. Stat. § 116.481, subd. 3, by failing to have a site diagram as required by the statute.

10. Matt Crowder violated Minn. R. 7151.6300 by failing to label the four tanks with substance stored, tank capacity, and tank number; failure to label active lines; and failing to post a sign with name, address, and phone number of owner, operator, or emergency responder.

11. If Matt Crowder is required to pay the forgivable penalty, that penalty should be modified because the deletion of the failure to register violation makes the penalty determined for Violation Group 1 unreasonable. The failure to register violation was a significant part of the determination that the deviation from compliance was major. With that violation removed, the deviation from compliance should be reduced from major to moderate. That would reduce the base penalty for Violation Group 1 from \$1,250 to \$600. It would also reduce the five percent willfulness/culpability adjustment for the forgivable penalty by \$33, from \$88 to \$55.

12. Matt Crowder violated Minn. R. 7151.6400 by failing to construct a secondary containment system with materials that met the permeability requirements of the rules.

13. Matt Crowder violated Minn. R. 7151.6500 by failing to provide substance transfer safeguards that effectively contain a release at the connection point and at the vehicle during transfer.

14. Matt Crowder violated Minn. R. 7151.6600 by failing to provide corrosion protection for Tank No. 1001, the vertical tank and failing to provide corrosion protection

for the underground lines from the substance transfer area to the tanks and from the tanks to the dispensers.

15. Matt Crowder violated Minn. R. 7151.6700, subp. 1, and 7151.5700 by failing to provide an allowed method of overfill protection.

16. Matt Crowder violated Minn. R. 7151.7200, subp. 4, by failing to conduct proper monthly tank leak testing and annual line leak testing.

17. Minn. R. 7151.9100 provides:

The owner or operator shall immediately remove a substance from an aboveground storage tank failing to meet the requirements of this chapter. The owner or operator shall refrain from further use of the aboveground storage tank until the tank or tank system complies with all applicable requirements of this chapter.

18. Matt Crowder violated Minn. R. 7151.9100 because he neither upgraded the tank system when required, nor emptied the four large tanks and removed them from service.

19. The penalties determined for Violation Group 2 are reasonable.

20. Matt Crowder violated Minn. R. 7151.7400, subp. 4, by failing to maintain records documenting that he had performed the tank monitoring requirements of Minn. R. 7151.7200, subps 2 and 3.

21. The penalty determined for Violation Group 3 is reasonable.

22. The amount of the penalty was determined considering all the factors set forth in Minn. Stat. § 116.072, subd. 2.

Based upon the foregoing Conclusions, and for the reasons discussed in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner:

23. **DELETE** Violation No. 1, which alleges a violation of Minn. Stat. § 116.48, from the APO.

24. **REDUCE** the base penalty for Violation Group 1 from \$1,250 to \$600 and the willfulness/culpability adjustment for the forgivable penalty from \$88 to \$55.

25. **AFFIRM** the APO in all other regards.

Dated October 4, 2004

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, three tapes.

^[1] Ex. 2.

^[2] Exs. 2, 20, 21, and 22; Testimony of Matt Crowder.

^[3] *Id.*

^[4] *Id.*

^[5] *Id.*; Testimony of Paul Crowder.

^[6] Ex. 20.

^[7] Ex. 22 at 3.

^[8] Ex. 11, Attachment B.

^[9] The Engineering Report is very brief. It makes no comment about the high water table that reportedly exists in the area or the possibility of a spill entering the groundwater.

^[10] Ex. 16 at 2.

^[11] Ex. 22 at 2.

^[12] Testimony of Paul Crowder.

^[13] 22 State Register 1813.

^[14] 23 State Register 883.

^[15] Testimony of Robert Dullinger.

^[16] Ex. 16.

^[17] Ex. 15.

^[18] Exs. 8 and 9.

^[19] Ex. 9.

^[20] *Id.*

^[21] Ex. 9.

^[22] Ex. 9; Testimony of Jason Lindquist.

^[23] Ex. 10.

^[24] Ex. 9.

^[25] Ex. 12.

^[26] "Serious violations may include conduct showing disregard of requirements or standards, or violations that present an actual or potential danger to the natural resources, public health, or environment." Ex. 12 at 2.

^[27] Staff is to examine the potential for harm to humans, animals, air, water, land, or other natural resources, and must consider the risk of actual harm caused by the violations. Due to the preventive nature of the statutes and rules, the focus is on potential for harm and not on actual harm. Ex. 12 at 3.

^[28] Staff is to consider the quantity or extent of the violation or the extent to which the regulated party attempted to prevent the violation. Ex. 12 at 3.

^[29] Ex. 12 at 3.

^[30] Ex. 12 at 5.

^[31] Economic benefit may be money the regulated party saved by not complying with the relevant law, or money the regulated party made as a result of violating the law. The economic benefit of each violation is considered separately.

^[32] Ex. 9 at 2.

^[33] Ex. 11.

^[34] Ex. 9 at 9.

^[35] Ex. 9 at 9-10.

^[36] Ex. 14.

^[37] Ex. 13 at 1; Testimony of Jason Lindquist.

^[38] Ex. 13 at 1-2.

^[39] Ex. 13 at 2.

^[40] Ex. 13 at 2-4.

^[41] Ex. 13 at 4-5.

^[42] Ex. 13 at 5-6.

^[43] Ex. 14.

^[44] Ex. 1.

^[45] Minn. Stat. §§ 116.07, subd. 9; 115.03, subd. 1(e).

^[46] Minn. R. 1400.7300.

^[47] Minn. Laws 1985, 1st Spec. Sess, Ch. 13, §§ 235 and 236; Minn. Laws 1989, Ch. 226, § 4.